

GARY S. ROBINSON
Claimant

STONE MASONS, INC.
Respondent

NORTHWESTERN NATIONAL CASUALTY
Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant makes a claim for medical treatment and temporary total disability benefits resulting from an alleged work-related injury to his left shoulder which occurred on July 25, 1995. Claimant testified that he injured his left shoulder while passing a bucket of concrete to a fellow employee. He immediately notified his supervisor and was placed on light duty driving a forklift because of the injury. Claimant had preexisting left shoulder problems which were attributed to an injury which occurred approximately eleven (11) years before that required surgery. Claimant also established that he requested medical treatment for

his left shoulder injury from John Born, president of the respondent. Mr. Born refused to provide medical treatment because he felt that claimant's injury was not work-related.

Claimant sought medical treatment on his own at the University of Kansas School of Medicine in Wichita, Kansas, which provides medical treatment to low income individuals. He received conservative medical treatment for his left shoulder injury through Drs. Brenda Taylor, Raphael Fernandez and George Lucas.

Mr. John Born, respondent's president, also testified and acknowledged claimant had notified him of an injury to his shoulder, but he had denied claimant's request for medical treatment because he felt that it was a continuing problem due to his preexisting shoulder injury. Mr. Born claimed that on numerous occasions, prior to this incident, that claimant had missed work because of his left shoulder being dislocated due to both work and nonwork-related accidents. Mr. Born further testified that the claimant returned to his regular work as a laborer after the July 28, 1995 accident. However, on cross-examination, Mr. Born changed this testimony and testified that the claimant returned to light-duty work, but only worked an hour, and left the job because of a disagreement with the foreman. Mr. Born then indicated that the claimant was fired for reasons not connected with his alleged work-related accident.

Respondent argues that this particular case is similar and is controlled by Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972). In Boeckman the claimant had a preexisting degenerative arthritic condition which the Court found was progressive in nature and would worsen whether the claimant was doing either normal daily activities or work activities. Respondent contends that claimant's preexisting left shoulder condition was, likewise, aggravated by normal everyday living activities whether he was at work or not. The Appeals Board disagrees with the analysis of the respondent as the claimant, in the case at hand, did not have a progressive condition as the claimant did in Boeckman. Claimant's testimony and the medical evidence introduced at the preliminary hearing established that although claimant had a preexisting injury to this left shoulder, the recent dislocation was caused by lifting activities while employed by the respondent. Accordingly, the Appeals Board finds the injury sustained by claimant at work is compensable as an aggravation of a preexisting condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated December 4, 1995 should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, Kansas
James A. Cline, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director